

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In the Matter of)	
)	
Petition on Defining Certain Incumbent)	
LEC Affiliates as Successors, Assigns,)	CC Docket No. 98-39
or Comparable Carriers Under Section)	
251(h) of the Communications Act)	
)	

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits comments in support of the Petition for Declaratory Rulemaking or, in the Alternative, for Rulemaking, filed by the Competitive Telecommunications Association, the Florida Competitive Carriers Association, and the Southeastern Competitive Carriers Association (collectively, "Petitioners").

I. INTRODUCTION

Since the enactment of the Telecommunications Act of 1996, incumbent local exchange carriers have attempted to circumvent their statutory obligations to provide facilities to other telecommunications carriers on a nondiscriminatory basis. The most recent and more blatant of these efforts has been the recent RBOC filings seeking forbearance pursuant to Section 706 of the 1996 Act from unbundling requirements under Section 251(c) and the prohibition on the provision

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of interLATA service under Section 271.¹ These petitions request that the Commission essentially permit them to ignore their express obligations under Sections 251, 252, 271, and 272 of the Communications Act. The Commission should discourage any attempt to circumvent these core requirements of the Act, which are essential for the transition to a competitive environment.

In this regard, Petitioners appropriately seek Commission action concerning the regulatory treatment for the growing number of incumbent local exchange carrier "affiliates" created to escape ILEC obligations under Sections 251 and 252 of the Communications Act. TCG agrees that the Commission should promptly declare that such affiliates cannot escape ILEC regulatory obligations, particularly under the conditions described in the Petition. These affiliates should be deemed successors or assigns under Section 251(h) of the Act.²

II. PAST RBOC PRACTICES DEMONSTRATE THAT THE COMMISSION SHOULD ACT PROMPTLY ON THE PETITION

Petitioners cite in particular BellSouth's practice of transferring resources to in-region affiliates to escape obligations of incumbent local exchange carriers under

1. See Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11; Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26; Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-32.

2. TCG does not oppose Petitioners' argument in the alternative that these affiliates could also be deemed "comparable" under Section 251(h).

Section 251 of the Act.³ Other RBOCs have proposed similar schemes for creating CLEC in-region affiliates. In some states, the efforts to escape regulatory requirements were defeated because the state statutes themselves do not permit varying regulations of carriers, even between ILECs and CLECs.⁴ However, the outcome has not been uniform among states, and TCG and other competitive carriers have expended significant resources to participate in state proceedings from California to Illinois to Wisconsin to help ensure that RBOCs uphold their obligations under Section 251(c). A favorable Commission ruling on the instant Petition would resolve the uncertainty raised in responding to individual RBOC efforts to escape Section 251 obligations.

Clearly, RBOCs cannot be afforded the benefit of the doubt, to the extent that there is any, regarding the purposes of these in-region CLEC affiliates. Indeed, the Commission itself has recognized the propensity of at least one RBOC, Ameritech, to contravene statutory requirements imposed on separate affiliates. In its Order denying Ameritech Michigan's Section 271 application, the Commission found that the presidents of Ameritech Michigan and ACI (its interLATA affiliate) reported to the same officer of Ameritech Corporation.⁵ Because Ameritech

3. See Petition at 6.

4. For example, statutes in Illinois and Michigan do not permit the state commissions to create regulatory regimes that distinguish between dominant and non-dominant carriers.

5. Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20732 (¶ 362) (1997).

Corporation was the corporate director for both Ameritech Michigan and ACI, Ameritech did not comply with Section 272(b)(3), requiring that the affiliate have separate officers, directors, and employees from the BOC with which it is affiliated.⁶ Similarly, the Commission determined that Ameritech had not disclosed publicly the rates for all of the transactions between Ameritech and ACI, nor the transactions themselves, as required by Section 272(b)(5).⁷

This practice of noncompliance illustrates how easily an RBOC could transfer resources and/or facilities to an unregulated affiliate, thereby escaping its regulatory obligations as an ILEC. Petitioners have shown that the BellSouth CLEC affiliate, BellSouth BSE, will receive important tangible and intangible assets from the parent, like corporate goodwill, financing, and human capital.⁸ Again, TCG has seen the same inappropriate relationship between Ameritech and its affiliate ACI. In proceedings investigating ACI's application to become a deregulated or lightly regulated LEC, ACI's Vice President of Finance testified that in Michigan alone, Ameritech's absorption of ACI expenses is, at a minimum, \$90 million.⁹ TCG's expert witness in this case characterized the arrangement as "a textbook

6. 47 U.S.C. § 272(b)(3).

7. Ameritech 271 Order, 12 FCC Rcd at 20734 (¶ 367); 47 U.S.C. § 272(b)(5).

8. Petition at 6.

9. Application of Ameritech Communications, Inc. for a License to Provide Basic Local Exchange Service to Ameritech Michigan and GTE North, Inc. Exchanges in Michigan, Case No. U-11053, Transcript at 425-27 (April 25, 1996).

case of cross-subsidy," explaining that no written agreement memorializes this debt funding and that no payback schedule has been set.¹⁰

These financial advantages are precisely what contributes to a carrier's dominance in the market and thus, the need for heightened regulation of those ILEC affiliates. The time is ripe for the Commission to ensure that ILEC obligations under Section 251(c) are upheld. Not only have efforts to create in-region CLECs continued, but the Commission has already recognized the RBOC practice, in particular, of ignoring both their separate affiliate requirements under Section 272 (Ameritech) and existing obligations under Section 251 (BellSouth, as described by Petitioners).¹¹ The Commission can help forestall further efforts to use affiliates to escape ILEC obligations by issuing a declaratory ruling or issuing a rule providing that these in-region affiliates will be subject to the same Section 251 obligations of their affiliated ILEC.

III. TREATMENT AS A "SUCCESSOR OR ASSIGN" UNDER SECTION 251(h) IS CONSISTENT WITH NON-ACCOUNTING SAFEGUARDS STANDARDS

In the Non-Accounting Safeguards proceeding, the Commission determined that "if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis . . . , we will deem such entity to be

10. Application of Ameritech Communications, Inc. for a License to Provide Basic Local Exchange Service to Ameritech Michigan and GTE North, Inc. Exchanges in Michigan, Case No. U-11053, Direct Testimony of Dr. Paul Teske at 12.

11. Petition at 7.

an 'assign' of the BOC."¹² On this basis, any successor or assign of the BOC is subject to the same Section 272 obligations as the BOC. TCG agrees with Petitioners that the same rationale should apply with respect to Section 251(h), but that the transfer of the use of the brand name, financial resources, personnel, and/or other resources — in addition to network elements — also requires that the in-region affiliate be labeled as a "successor" or "assign."

Petitioners have presented a compelling set of circumstances under which an affiliate essentially steps into the shoes of the ILEC in terms of brand name familiarity and available financial and personnel resources, and thus, should be treated as a successor or assign under Section 251(h). TCG agrees that Section 251(h) should apply as a rebuttable presumption when the affiliate is providing local exchange or exchange access in the same region as the ILEC and bearing the same or similar brand names.¹³

In this regard, an RBOC affiliate subject to Section 251(h) must also be prohibited from providing in-region interLATA service. The Commission previously resisted prohibiting Section 272 interLATA RBOC affiliates from providing local exchange service.¹⁴ However, when the affiliate is a successor or assign of the RBOC, then Section 272 separate affiliate requirements must apply, because "[a]ny

12. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order, 11 FCC Rcd 21905, 22054 (¶ 309) (1996), pets. for recon. pending.

13. See Petition at 11 and n.25.

14. Non-Accounting Safeguards Order, 11 FCC Rcd at 22055-56 (¶ 312).

successor or assign of the BOC is subject to the section 272 requirements in the same manner as the BOC."¹⁵ Thus, the Commission should also declare that a "CLEC" affiliate that is deemed to be an RBOC successor or assign cannot continue to offer integrated in-region interLATA and intraLATA services under Section 272 of the Act.

IV. CONCLUSION

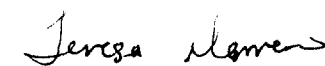
As efforts to circumvent Section 251 obligations escalate, the Commission must vigorously enforce the Communications Act to ensure continued compliance. Petitioners have proposed a straight-forward means for the Commission to ensure that ILECs do not avoid statutory obligations through the creation of so-called "CLEC" affiliates. That is, when the in-region affiliate bears the same or similar name and benefits from the financial and personnel resources of the ILEC, then it should be treated as a successor or assign of the ILEC under Section 251(h) and bear the same obligations under Section 251(c).

15. See id. at 22054 (¶ 309).

In addition, if the Commission agrees that these affiliates are successors or assigns of the ILEC, then such RBOC affiliates must be prohibited from providing in-region interLATA services pursuant to Section 272 and the Commission's Non-Accounting Safeguards Order.

Respectfully submitted,

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Dated: May 1, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments was sent by hand-delivery and first-class mail, as indicated, this 1st day of May, 1998, to the following:

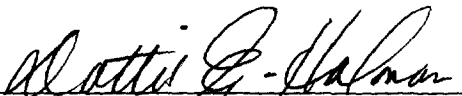
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